

# **Surya Kencana Tiga :**

## **MASALAH HUKUM, KEADILAN DAN GOVERNMENT**

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### **Upaya Hukum Terhadap Tindak Pidana Penggunaan Ijazah Palsu**

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| <b>Article</b>  | <b>Abstract</b>   |
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| <p><i>Received:</i> ;<br/><i>Reviewed:</i> ;<br/><i>Accepted:</i> ;<br/><i>Published:</i></p> | <p>Ijazah merupakan dokumen resmi yang diterbitkan sebagai pengakuan terhadap prestasi belajar dan/atau penyelesaian suatu jenjang pendidikan setelah lulus ujian. Perbuatan Pemalsuan Ijazah merupakan suatu bentuk penyerangan terhadap kepercayaan masyarakat pada kebenaran suatu ijazah, terlebih lagi hal itu merupakan tindakan penghinaan terhadap dunia pendidikan oleh pihak atau lembaga yang mengaku sebagai suatu satuan pendidikan yang sah. Pertanggungjawaban pidana merupakan pembebanan hukuman terhadap orangorang yang melakukan tindak pidana dan mampu bertanggungjawab. Tindak pidana pemalsuan ijazah dikatagorikan ke dalam Pasal 263 KUHP yaitu tentang pemalsuan surat, dimana pengaturan tentang pemalsuan ijazah dalam rumusan pasal 263 KUHP tidak dinyatakan secara eksplisit tetapi secara implisit akan tetapi pemalsuan ijazah diatur secara khusus dalam Undang-undang Nomor 20 Tahun 2003 Tentang Sistem Pendidikan Nasional.</p> |

**Kata Kunci :** Tindak Pidana, Pemalsuan Ijazah Palsu.

A diploma is an official document issued as an acknowledgment of learning achievement and/or completion of a level of education after passing the exam. The act of counterfeiting a diploma is a form of attack on public trust in the truth of a diploma, moreover it is an act of humiliation against the world of education by a party or institution claiming to be a legitimate educational unit. Criminal liability is the imposition of punishment on people who commit criminal acts and are able to take responsibility. The crime of falsifying diplomas is categorized into Article 263 of the Criminal Code, namely regarding letter falsification, where the regulation on counterfeiting diplomas in the formulation of Article 263 of the Criminal Code is not stated explicitly but implicitly but diploma falsification is specifically regulated in Law No. 20 of 2003 concerning the National Education System.

**Keywords:** *Criminal Act, Counterfeiting, Diploma*

## INTRODUCTION

The crime of forgery is a crime that often occurs, either with or without tools, due to technological advances that make it easier for perpetrators to commit forgery or fraud. Forgery is an unlawful act that harms others with the aim of misleading or seeking profit. The crime of forgery or abbreviated as the crime of forgery is a crime that contains elements of untruth or falsehood of something (object), which something appears from the outside as if it were true when in fact it is contrary to the truth.<sup>1</sup> The crime of forgery is included in the crime of fraud, where someone describes a condition or item (letter) as if it were genuine or true. Because of this description, other people are deceived and believe that the condition described on the item/letter is true or genuine. Forgery of writing/letters occurs when the contents of the letter are not true and are described as true.<sup>2</sup>

The crime of forgery is a form of crime that is quite often committed by the community with or without a tool, because in the modern era, the rapid advancement of technology can support criminals so that it is easier to commit a crime of forgery or fraud. Forgery comes from the word fake which means an act that violates the law and harms others, both oneself and others, fake and so on with the intention of misleading, tricking or seeking profit.

The crime of forgery is classified as a group of fraudulent crimes, if someone gives a description of a condition of an item (letter) as if it were genuine or the truth is owned by him. Because of this description, other people are deceived and believe that the condition described on the item/letter is true or genuine. Forgery of writings/letters occurs when the contents of the letter that are not true are described as true. Forgery of letters/writings also occurs in the world of education, for example, forgery of diplomas. Forgery of diplomas has become a moral disease that has no cure, and it has spread to all levels of education. Justifying any means just to get a diploma. This happens not only involving ordinary people, state officials, teachers and civil servants are also not free from fraudulent acts in the world of education.<sup>3</sup>

The principle of legality where an act is not considered a crime if the act is not expressly stated in the criminal law regulations. The Criminal Code (KUHP) or other criminal provisions. This is still used as a basis for ensuring legal certainty.<sup>4</sup>

<sup>1</sup> Adami Chazawi, 2000, Kejahatan Terhadap Pemalsuan, Rajawali Pers, Jakarta, h. 3.

<sup>2</sup> H.A.K. Moch. Anwar, 1990, Hukum Pidana di Bidang Ekonomi, Citra Aditya Bakti, Bandung, h. 128.

<sup>3</sup> Nugroho, Y. (2022). Tindak Pidana Terhadap Penggunaan Ijazah Palsu. *Mimbar Integritas: Jurnal Pengabdian*, 1(2), 168-177

<sup>4</sup> Musdalifa R, 2013, Tinjauan Yuridis Terhadap Tindak Pidana Penggunaan Ijazah Palsu, Fakultas Hukum Unhas, Makassar, hlm. 1.

Forgery of diplomas is not only a criminal act that can be punished, but also a violation of academic ethics. Academic ethics must be applied in academic and educational activities. Actions that violate academic ethics are wrong and should be avoided. Although many cases of forgery of diplomas have been revealed and prosecuted, this action still continues to occur.

Examples of cases of the use of fake diplomas that occurred in Indonesia include:

1. Alleged use of fake diplomas by senior comedian and former member of the DPR Nurul Qomar. Nurul Qomar is suspected of falsifying his Masters and Doctoral degrees as a requirement to run as Chancellor of Muhadi Setiabudhi University (Umus). Seeing the articles violated, the police said Nurul Qomar is threatened with seven years in prison. The suspect Nurul Qomar violated Article 263 of the Criminal Code with a sentence of seven years in prison.
2. And from Probolinggo Regency, Gerindra Party politician and also Probolinggo DPRD member Abdul Kadir was also caught in a case of falsifying diplomas. He is suspected of falsifying a Package C diploma to register as a legislative candidate in the 2019 Election. Seeing the articles that Abdul Kadir violated, he was charged with Article 266 paragraph (2) sub 263 paragraph (2) of the Criminal Code, the threat of punishment under Article 266 is 7 years and 263 is 6 years in prison.<sup>5</sup>

Law enforcement, in terms of its subject, can be interpreted broadly or narrowly. In a broad sense, law enforcement involves all legal objects in every legal relationship, where anyone who carries out or does not carry out legal norms is considered to be enforcing the law. While in a narrow sense, law enforcement only refers to the efforts of law enforcement officers to ensure that legal rules are implemented correctly. In ensuring the enforcement of a legal rule, if necessary, law enforcement officers are permitted to use coercive measures.<sup>6</sup>

The main problem in law enforcement actually lies in several factors, these factors have a neutral meaning, so that the positive or negative impact lies in the content of these factors.<sup>7</sup>

These factors include:

1. The legal factor itself, which is limited to statutory regulations only;
2. Law enforcement factors, namely the parties who form or implement the law;
3. Factors of facilities or facilities that support law enforcement;

<sup>5</sup> <https://www.cnnindonesia.com/nasional/20191007141324-12-437446/ijazah-palsu-anggota-dprd-probolinggo-dari-gerindra-ditahan>. Diakses pada tanggal 12 Desember 2024.

<sup>6</sup> Dellyana, Shant. 1988, Konsep Penegakan Hukum, Liberty, Yogyakarta, hlm.34

<sup>7</sup> Soerjono Soekanto, 2008, Faktor-faktor Yang Mempengaruhi Penegakan Hukum, PT Raja Grafindo Persada, Jakarta, hlm. 8

4. Community factors, namely the environment in which the law applies or is implemented;
5. Cultural factors, namely as a result of work, creation, and feeling based on human will in social interaction.

The five factors above are things that influence law enforcement, both in the form of positive and negative influences.<sup>8</sup>

## FOCUS OF PROBLEMS

From the background above, the problem is formulated as follows:

1. How are the legal efforts in the criminal act of using fake diplomas in Indonesia?
2. What are the obstacles in enforcing the criminal law on the use of fake diplomas?

## RESEARCH METHODS

The method used in this study is the normative law research method, namely reviewing laws and regulations. By using the normative method, this study will review the problem by analyzing laws and regulations that are specifically related to the criminal act of using fake diplomas. The research sources in the normative method are in the form of library materials, consisting of primary materials, secondary materials, and tertiary materials. The primary legal materials that will be used are

1. Criminal Code ("KUHP")
2. Law Number 20 of 2003 concerning the National Education System ("UU Sisdiknas")
3. Law Number 29 of 2004 concerning Medical Practice ("UU Praktek Medis"),
4. Makassar District Court Decision Number: 635 / Pid.B / 2020 / PN.Mks. The secondary legal materials used are in the form of bibliographic books, articles, journals, scientific works, and academic manuscripts related to the issues in this legal research.

Furthermore, this research will apply a statute approach, namely a method research that will approach regulations related to the issue of the problem. This research will approach regulations related to the handling of fake diploma case.<sup>9</sup>

## FINDING & DISCUSSION

1. Referensi Teoritis
  - a. Criminal Act.

<sup>8</sup> *Ibid.*, hlm.39

<sup>9</sup> Amanta, F., & Adhari, A. (2023). Penerapan Hukum Pidana terhadap Tindak Pidana Penggunaan Ijazah Palsu dalam Putusan Nomor 635/Pid. B/2020/Pn. Mks Ditinjau Dari Asas Lex Specialis Derogat Legi Generali. *Jurnal Pendidikan dan Konseling (JPDK)*, 5(1), 468-474.

According to Satjipto Rahardjo, criminal law enforcement regulates an effort to realize ideas and concepts into reality. So, law enforcement is a process of realizing legal desires into reality.<sup>10</sup>

According to Lawrence Friedman, the success or failure of law enforcement depends on:

1. Legal Substance, including the legal instruments and norms and real human behavior in the system;
2. Legal Structure, concerning law enforcement officers or structural systems that determine whether or not the law can run well.
3. Legal Culture, namely human attitudes towards law and the legal system of beliefs, values, thoughts, and hopes. Legal Culture is closely related to the legal awareness of society.<sup>11</sup>

Meanwhile, according to Soerjono Soekanto, the main problem of law enforcement actually lies in the factors that may influence it. These factors are:

1. The law itself;
2. Law enforcement;
3. Facilities that support law enforcement;
4. Society;
5. Culture;

Criminal law enforcement is related to the Criminal Justice System, which according to Ali Said, S.H. is a collaboration between institutions in criminal justice in an integrated manner even though each has a different function, with the same goal. In addition, this is also related to the theory of punishment, which is explained by Satohid Kartanegara and criminal law experts, the theory of punishment or punishment in criminal law has three schools, namely:<sup>12</sup>

1. Absolute or vergeldings theorieen (vergelden/reward), This school of thought teaches that the basis of punishment must be sought in the crime itself as the basis of the relationship that is considered as retribution, reward (vergelding) for the person who committed the evil act. Therefore, the crime causes suffering for the victim.

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<sup>10</sup> Muchamad Iksan, 2012, Dasar-dasar Kebijakan Hukum Pidana Berperspektif Pancasila, [www.hukum.ums.ac.id](http://www.hukum.ums.ac.id), 2 Desember 2024..

<sup>11</sup> *Ibid.*

<sup>12</sup> Satohid Kartanegara, 1963, Hukum Pidana Bagian Satu, Balai Lektur Mahasiswa, Jakarta, hlm.56

2. Relative or doel theorieen (doel/intent, purpose), In this teaching, what is considered the legal basis for punishment is not *velgelding*, but the purpose (doel) of the punishment. So this school of thought makes punishment aware of the intent and purpose of the punishment, meaning that this theory seeks the benefits of punishment (*nut van de straf*).
3. Verenigings theorieen (combined theory), This theory is a reaction to the previous theory which was less than satisfactory in answering the nature of the purpose of punishment. According to the teachings of this theory, the legal basis for punishment lies in the crime itself, namely retribution or torture, but in addition, it is also recognized as the basis for punishment is the purpose of the law.

b. Rule of Law

The idea of a State of Law is not only related to the concept of "rechtstaat" and "the rule of law". It is also related to 'nomocracy' which comes from the words "nomos" and "cratos". The word nomocracy can be compared to "demos" and "cratos" in democracy. "nomos" means norm, while "cratos" is power<sup>13</sup> In modern times, the concept of the Rule of Law in Continental Europe was developed by Immanuel Kant, Fichte and others, using the German term "rechtstaat", while in Anglo America/Saxon, the concept of the Rule of Law was developed by A.V. Decey with "The Rule of Law". According to Julius Stahl, the concept of the Rule of Law referred to as "rechtstaats" includes four important elements, namely;

1. Protection of human rights.
2. Division of power.
3. Government based on law.
4. State administrative justice.<sup>14</sup>

2. Criminal Act

Education is very important, because usually the quality of human intelligence is seen from how high a person's education is. Not only that, with education, humans can also achieve the fulfillment of their life needs by working. It is not a special thing if many people compete to get the highest education. The government is also serious about promoting education, as evidenced by the existence of one of the regulations governing education.

<sup>13</sup> Jimly Assidiqy., *Pengantar Hukum Tata Negara*, Kon-press Jakarta 2006, Hlm 3

<sup>14</sup> Yoyon M. Darusman, *Tinjauan Yuridis Pelaksanaan Pengujian Perundangundangan Terhadap Undang-Undang Dan Peraturan Pemerintah Tentang Ratifikasi Atas Konvensi Internasional (Studi Kasus Ratifikasi Konvensi Internasional Di Bidang Haki)*. *Kreatif | Jurnal Ilmiah Prodi Manajemen Universitas Pamulang | Vol. 1, No. 1, Oktober 2013*.

The regulation is stated in the 1945 Constitution of the Republic of Indonesia Article 31 paragraph (1) which states that "Every citizen has the right to receive education" and paragraph (2) states that "The government shall endeavor and organize a national education system regulated by law". From the explanation of this article, the government provides instructions that the government is mandated to guarantee the rights of citizens to receive education services, in addition the government is also obliged to organize a national education system. Pancasila as the basis of the State is of course also the foundation for the government of the Republic of Indonesia. Not only the basis of the State and the foundation for the government of the State but also becomes a guideline in social, national and state life.<sup>15</sup>

In addition, another problem has also emerged in our education world, namely the current rampant existence of fake diplomas. Public awareness of the importance of education is still low. As evidenced by the rampant existence of fake diplomas, people tend to choose the easy way, even though it is wrong, not thinking that the education process is very important. The desire to obtain the desired degree is not accompanied by the right attitude to achieve it. Regarding the alleged use of fake diplomas, it is necessary to carry out control to maintain the dignity and honor of the world of education. Against individuals who are proven to use fake diplomas, in addition to being held criminally responsible.

The criteria for fake diplomas according to the Regulation of the Head of the State Civil Service Agency Number 25 of 2015 concerning Administrative Actions and Disciplinary Punishments Against Civil Servants Who Use Fake Diplomas, namely diplomas that have the following characteristics:

- a. A fake diploma is a diploma whose form, characteristics and contents are invalid

The criteria for a fake diploma are as follows:

1. The diploma form is fake; The diploma form is valid, issued by an authorized institution, but not signed by an official authorized to sign the diploma;
2. The diploma form is valid, issued by an authorized institution, signed by an official authorized to sign the diploma, but some or all of its contents are incorrect and/or
3. The diploma was obtained in a manner that is not in accordance with the provisions of laws and regulations governing education.

The official who is authorized to determine the authenticity of a diploma according to the Regulation of the Head of the State Civil Service Agency Number 25 of 2015 concerning

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<sup>15</sup> Buchari Zainun, 1990, Administrasi Dan Manajemen Kepegawaian Pemerintah NegaraIndonesia, Haji Masagung, Jakarta, Hal 9.

Administrative Actions and Disciplinary Penalties Against Civil Servants Who Use Fake Diplomas, is regulated as follows:

1. In the Ministry of Research, Technology and Higher Education, namely:
  - a. Head of State Universities, for diplomas issued by State Universities; and
  - b. Head of Private Higher Education Coordinator (Kopertis), for diplomas issued by Private Higher Education Institutions.
2. In the Regional Government, namely the Head of the Provincial/District/City Education Office, for diplomas issued by Elementary Schools, Junior High Schools, Senior High Schools, or equivalent, both public and private schools.
3. In the Ministry of Religious Affairs, namely:
  - a. Head of State Universities, for diplomas issued by State Universities within the Ministry of Religious Affairs;
  - b. Head of Private Islamic Religious Higher Education Coordinator (Kopertais), for diplomas issued by Private Islamic Religious Higher Education Institutions; and
  - c. Head of the Regional Office of the Ministry of Religious Affairs, for diplomas issued by Madrasah Ibtidaiyah, Madrasah Tsanawiyah, and Madrasah Aliyah or equivalent, both state and private madrasahs.
4. In the Ministry of Health, namely the Head of the Health Human Resources Development and Empowerment Agency, for diplomas issued by health schools or similar, both state and private.
5. In other government agencies, namely the Minister/other appointed Official, for diplomas issued by schools/educational institutions of the relevant agency.

b. Prevention Efforts.

As an initial step and an effective way to check the authenticity of a diploma, according to Muhammad Nasir (Minister of Research, Technology and Higher Education in the Working Cabinet for the 2014–2019 period), the Ministry of Research, Technology and Higher Education launched the National Diploma Numbering (PIN) program and the Electronic Diploma Verification System (Sivil) which began to be implemented on September 1, 2016. The two programs are intended to minimize losses incurred by the public and universities due to the rampant fake diplomas. Sivil and PIN are expected to not only make it easier for the public to check the validity of diplomas issued by universities in Indonesia and make it

easier for the government to monitor graduate statistics but will also minimize the circulation of fake diplomas.<sup>16</sup>

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<sup>16</sup> <https://www.medcom.id/nasional.metro/IKY1AexK-kemenristek-dikti-luncurkan-dua-program-antisipasi-ijazah-palsu>. Diakses pada tanggal 02 Desember 2024

to the rampant fake diplomas. Sivil and PIN are expected to not only make it easier for the public to check the validity of diplomas issued by universities in Indonesia and make it easier for the government to monitor graduate statistics but will also minimize the circulation of fake diplomas.<sup>17</sup>

## CONCLUSION

Education plays an important role in human life, not only to increase intelligence but also to open up opportunities for prosperity through employment. The Indonesian government is committed to ensuring the rights of citizens to proper education, as stipulated in the 1945 Constitution. However, a serious problem has arisen with the rampant use of fake diplomas for personal gain, which damages the image of the world of education. To overcome this, the government has issued various regulations and programs such as the National Diploma Numbering (PIN) and the Electronic Diploma Verification System (Sivil) to facilitate checking the authenticity of diplomas and prevent the spread of fake diplomas, in order to maintain the integrity of education for the advancement of the nation.

To overcome the problem of education and the use of fake diplomas, strategic steps are needed, such as increasing public awareness of the importance of legitimate education and strict law enforcement against perpetrators of diploma forgery. Diploma verification systems, such as PIN and Sivil, must be strengthened and made more accessible, while collaboration between the government, educational institutions, and the business world is important to ensure the authenticity of diplomas. Character and ethics education that instills the value of honesty also needs to be included in the curriculum. In addition, increasing access to quality education and scholarship programs must be carried out to reduce dependence on fake diplomas. These steps are expected to reduce the problem of fake diplomas and improve the quality of education in Indonesia.

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<sup>17</sup> Op.Cit. Nugroho, Y.

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